STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ANTHONY AARON,

Defendant-Appellant.

UNPUBLISHED
October 20, 1998

No. 202473
Genesee Circuit Court
LC No. 95-052794 FH

Before: Hoekstra, P.J., and Cavanagh and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(a)(iv); MSA 14.15(7401)(a)(iv). He was sentenced to three to twenty years' imprisonment. Defendant appeals as of right. We affirm.

I

Defendant first argues that the trial court erred in refusing to suppress the evidence seized from the car he was driving. Defendant contends that the police were not justified in stopping him. In addition, defendant asserts that he was not validly arrested, and the search incident to the arrest was therefore improper.

This Court reviews for clear error the trial court's findings of fact in deciding a motion to suppress evidence. We review de novo the trial court's ultimate decision regarding a motion to suppress. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

The brief detention of a person following an investigatory stop is considered a reasonable seizure if the officer has a "reasonably articulable suspicion" that the person is engaging in criminal activity. *People v LoCicero (After Remand)*, 453 Mich 496, 501; 556 NW2d 498 (1996). Reasonable cause necessary to stop a motor vehicle need not arise from a police officer's personal observation, but may also be supplied by a citizen-informant if the information carries enough indicia of reliability to provide the officer with a reasonable suspicion that criminal activity is afoot. *People v Armendarez*, 188 Mich App 61, 67; 468 NW2d 893 (1991). Whether there is sufficient indicia of

reliability to support a reasonable suspicion of criminal activity based on a tip by an informant is tested under the totality of the circumstances. *People v Faucett*, 442 Mich 153, 172; 499 NW2d 764 (1993).

In the present case, Sergeant McLeod testified that the informant had given him reliable information in the past. The informant told McLeod that a man called "Jake" would be arriving at 112 East Tobias in a new-model, red Mustang 5.0 sometime in the evening. The informant described Jake as a 24- to 25-year old black man weighing approximately 160 to 170 pounds. McLeod observed defendant, driving a 1995 red Mustang 5.0 pull into the driveway of 112 East Tobias at approximately 9:45 p.m. Piazza testified that defendant fit the description given by the informant.[1] Under the totality of the circumstances, we conclude that there was sufficient indicia of reliability to support a reasonable suspicion of criminal activity based on the tip by the informant.[2] See *id*.

Following the investigatory stop, defendant was arrested for driving without a driver's license. Although defendant testified that he was not asked for his license and that he had his driver's license at the time of the arrest, McLeod testified that he asked defendant for his license, and defendant replied that he did not have it. The trial court believed McLeod. Questions of credibility are left to the trier of fact and will not be resolved anew by this Court. *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997). The police have the discretion to arrest a person driving without an operator's license. *People v Poole*, 199 Mich App 261, 265; 501 NW2d 265 (1992); see also MCL 257.311; MSA 9.2011. When the occupant of an automobile is lawfully arrested, the police may search the entire passenger compartment of the automobile. *People v Bullock*, 440 Mich 15, 26; 485 NW2d 866 (1992). Therefore, because defendant was lawfully arrested, the trial court did not err in denying defendant's motion to suppress the evidence found in the Mustang.

II

Defendant next argues that there was insufficient evidence from which rational jurors could determine beyond a reasonable doubt that he was guilty of possessing cocaine. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Officer Piazza and McLeod both testified that, as they approached defendant's vehicle, defendant had his hands between his legs and appeared to be either placing or retrieving something from the floor underneath his seat. After the occupants of the car were removed, under the front seat, only partially obscured from view, Piazza spotted a Ziplock baggie that contained an electronic scale and two smaller baggies of crack cocaine. McLeod testified that, in his opinion, defendant possessed the cocaine with the intent to deliver; he based this conclusion on the quantity of cocaine, the way the cocaine was packaged, the fact that there was a scale, the amount of money found on defendant, and the fact that there was no paraphernalia in the car that would indicate drug use.

From this evidence, the jury could reasonably infer that defendant possessed the cocaine, that is, he knew that it was present and had the right to exercise control of it. See *People v Catanzarite*, 211 Mich App 573, 577; 536 NW2d 570 (1995). Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence. Intent to deliver may be inferred from the quantity of narcotics in a defendant's possession, the way the narcotics are packaged, and other circumstances surrounding the arrest. *Wolfe*, *supra* at 524-526. Viewing the evidence presented at trial in a light most favorable to the prosecution, we conclude that a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.

III

Defendant next argues that the trial court erroneously refused to allow Sergeant McLeod to testify that the man who rented the Mustang, Marcus Hawkins, was Frederick Johnson's brother. A trial court's decision to admit evidence will not be reversed absent an abuse of discretion. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). To find an abuse of discretion, the result must have been so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *Id.*

The trial court properly precluded defendant from eliciting testimony from McLeod that Marcus Hawkins was Frederick Johnson's brother. Because McLeod's knowledge of the relationship was based solely on what he had been told by a witness and was being offered to prove the truth of the matter asserted, the testimony would have constituted hearsay. See MRE 801(c). Hearsay is not admissible unless it falls within an exception to the hearsay rule. MRE 802.[3]

Moreover, any error would have been harmless. McLeod testified that the Mustang was rented in the name of Hawkins, not defendant. Defendant and Wynn McCree testified that Johnson was driving the car when he picked them up, and he asked defendant to drive. Under these facts, the jury could have concluded that Johnson had greater control over the vehicle than defendant without knowing of the familial relationship between Johnson and Hawkins.

IV

Finally, defendant argues that the trial court erroneously refused to instruct the jury that McCree walked unsteadily because she had been hospitalized. We disagree. Defendant did not present any evidence to indicate that the reason McCree walked unsteadily was because she had recently been hospitalized. In addition, there was nothing in the record that would cause the jury to think that McCree was under the influence of drugs at the time she testified. Thus, the requested instruction was not supported by the evidence, and the trial court properly refused to give it. See *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell

[1] Defendant concedes that he is a black male but asserts that he was actually age 29 at the time and weighed 175 pounds. However, given the difficulty in estimating age and weight, we do not consider these discrepancies serious enough to find the informant unreliable, given the accuracy of the remainder of his information.

[2] Although the police were obviously not aware of this when they stopped defendant, we note that defendant told them his name but that he was called "Jake."

[3] Defendant argues on appeal that the testimony was admissible under MRE 803(19). However, defendant did not raise this argument at trial, and it is therefore not preserved for appellate review. See *People v Stanaway*, 446 Mich 643, 694; 521 NW2d 557 (1994), cert den sub nom *Michigan v Caruso*, 513 US 1121 (1995).